

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 353

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO ORIENTAL MEDICINE; CLARIFYING THE PRACTICE OF
ORIENTAL MEDICINE AND PRESCRIPTIVE AUTHORITY OF DOCTORS OF
ORIENTAL MEDICINE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-14A-3 NMSA 1978 (being Laws 1993,
Chapter 158, Section 11, as amended) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and
Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles
inserted into and removed from the body and the use of other
devices, modalities and procedures at specific locations on the
body for the prevention, cure or correction of any disease,
illness, injury, pain or other condition by controlling and
regulating the flow and balance of energy and function to

.168237.1

underscoring material = new
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1 restore and maintain health;

2 B. "board" means the board of acupuncture and
3 oriental medicine;

4 C. "doctor of oriental medicine" means a person
5 licensed as a physician to practice acupuncture and oriental
6 medicine with the ability to practice independently, serve as a
7 primary care provider and as necessary collaborate with other
8 health care providers;

9 D. "moxibustion" means the use of heat on or above
10 specific locations or on acupuncture needles at specific
11 locations on the body for the prevention, cure or correction of
12 any disease, illness, injury, pain or other condition;

13 E. "oriental medicine" means the distinct system of
14 primary health care that uses all allied techniques of oriental
15 medicine, both traditional and modern, to diagnose, treat and
16 prescribe for the prevention, cure or correction of [~~any~~]
17 disease, illness, injury, pain or other physical or mental
18 condition by controlling and regulating the flow and balance of
19 energy, form and function to restore and maintain health;

20 F. "primary care provider" means a health care
21 practitioner acting within the scope of [~~his~~] the health care
22 practitioner's license who provides the first level of basic or
23 general health care for a person's health needs, including
24 diagnostic and treatment services, initiates referrals to other
25 health care practitioners and maintains the continuity of care

.168237.1

1 when appropriate;

2 G. "techniques of oriental medicine" means:

3 (1) the diagnostic and treatment techniques
4 used in oriental medicine that include diagnostic procedures;
5 acupuncture; moxibustion; manual therapy, also known as tui na;
6 other physical medicine modalities and therapeutic procedures;
7 breathing and exercise techniques; and dietary, nutritional and
8 lifestyle counseling;

9 (2) the ~~[prescription or administration]~~
10 prescribing, administering, combining and providing of ~~[any]~~
11 herbal [medicine] medicines, homeopathic ~~[medicine]~~ medicines,
12 vitamins, minerals, enzymes, glandular products, natural
13 substances, natural medicines, protomorphogens, live cell
14 products, gerovital, amino acids, ~~[and]~~ dietary and nutritional
15 supplements, cosmetics as they are defined in the New Mexico
16 Drug, Device and Cosmetic Act and nonprescription drugs as they
17 are defined in the Pharmacy Act; and

18 (3) the ~~[prescription or administration]~~
19 prescribing, administering and providing of devices, restricted
20 devices and prescription devices, as those devices are defined
21 in the New Mexico Drug, Device and Cosmetic Act, if the board
22 determines by rule that the devices are necessary in the
23 practice of oriental medicine and if the prescribing doctor of
24 oriental medicine has fulfilled requirements for prescriptive
25 authority in accordance with rules promulgated by the board for

.168237.1

1 the devices enumerated in this paragraph;

2 ~~[(4) the prescription or administration of~~
3 ~~cosmetics, biological products, including therapeutic serum,~~
4 ~~and over-the-counter drugs, other than those enumerated in~~
5 ~~Paragraph (2) of this subsection, as those are defined in the~~
6 ~~New Mexico Drug, Device and Cosmetic Act if the prescribing~~
7 ~~doctor of oriental medicine has fulfilled the requirements for~~
8 ~~prescriptive authority in accordance with rules promulgated by~~
9 ~~the board for the substances enumerated in this paragraph; and~~

10 ~~(5) the prescription or administration of the~~
11 ~~following dangerous drugs or controlled substances as they are~~
12 ~~defined in the New Mexico Drug, Device and Cosmetic Act, or the~~
13 ~~Controlled Substances Act if the prescribing doctor of oriental~~
14 ~~medicine has fulfilled the requirements for extended or~~
15 ~~expanded prescriptive authority in accordance with rules~~
16 ~~promulgated by the board for the substances enumerated in this~~
17 ~~paragraph:~~

- 18 ~~(a) sterile water;~~
- 19 ~~(b) sterile saline;~~
- 20 ~~(c) sarapin or its generic;~~
- 21 ~~(d) caffeine;~~
- 22 ~~(e) procaine;~~
- 23 ~~(f) oxygen;~~
- 24 ~~(g) epinephrine;~~
- 25 ~~(h) vapocoolants;~~

1 ~~(i) bioidentical hormones; and~~
2 ~~(j) any of the drugs or substances~~
3 ~~enumerated in Paragraphs (2) and (4) of this subsection if at~~
4 ~~any time these substances or drugs are classified as dangerous~~
5 ~~drugs or controlled substances] and~~

6 H. "tutor" means a doctor of oriental medicine with
7 at least ten years of clinical experience who is a teacher of
8 acupuncture and oriental medicine."

9 Section 2. Section 61-14A-4.1 NMSA 1978 (being Laws 2003,
10 Chapter 193, Section 1) is amended to read:

11 "61-14A-4.1. CERTIFIED AURICULAR DETOXIFICATION
12 SPECIALISTS, SUPERVISORS AND TRAINING PROGRAMS--FEES.--

13 A. A person who is not a doctor of oriental
14 medicine or who is not a person certified as an auricular
15 detoxification specialist pursuant to the Acupuncture and
16 Oriental Medicine Practice Act shall not:

17 (1) practice auricular acupuncture for the
18 treatment of alcoholism, substance abuse or chemical
19 dependency;

20 (2) use the title of or represent as a
21 certified auricular detoxification specialist or use any other
22 title, abbreviation, letters, figures, signs or devices that
23 indicate that the person is certified to practice as an
24 auricular detoxification specialist; or

25 (3) advertise, hold out to the public or

.168237.1

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1 represent in any manner that the person is authorized to
2 practice auricular detoxification.

3 B. The board shall issue an auricular
4 detoxification specialist certification to a person who has
5 paid an application fee to the board and has successfully
6 completed all board requirements. The board shall adopt rules
7 that require an applicant to:

8 (1) successfully complete the national
9 acupuncture detoxification association training or equivalent
10 training approved by the board that shall include clean needle
11 technique training;

12 (2) demonstrate experience in treatment,
13 disease prevention, harm reduction and counseling of people
14 suffering from alcoholism, substance abuse or chemical
15 dependency or become employed by a substance abuse treatment
16 program;

17 (3) complete a board-approved training program
18 that will include examinations on clean needle technique,
19 jurisprudence and other skills required by the board; and

20 (4) demonstrate a record free of convictions
21 for drug- or alcohol-related offenses for at least two
22 consecutive years before the person applied to the board for
23 certification.

24 C. A certified auricular detoxification specialist
25 is authorized to perform auricular acupuncture and the

1 application to the ear of simple board-approved devices that do
2 not penetrate the skin for the purpose of treating and
3 preventing alcoholism, substance abuse or chemical dependency.
4 The specialist shall use the five auricular point national
5 acupuncture detoxification procedure or auricular procedures
6 approved or established by rule of the board and shall only
7 treat or prevent alcoholism, substance abuse or chemical
8 dependency within a board-approved program that demonstrates
9 experience in disease prevention, harm reduction or the
10 treatment or prevention of alcoholism, substance abuse or
11 chemical dependency.

12 D. A person certified pursuant to this section
13 shall use the title "certified auricular detoxification
14 specialist" or "C.A.D.S." for the purpose of advertising
15 auricular acupuncture services to the public.

16 E. A certified auricular detoxification specialist
17 shall apply with the board to renew the certification. The
18 board shall for one year renew the certification of an
19 applicant who pays a renewal fee and completes the requirements
20 established by rule of the board. An applicant who does not
21 apply for renewal before the last date that the certification
22 is valid may be required to pay a late fee pursuant to a rule
23 of the board. The board shall deem a certification for which a
24 renewal has not been applied within sixty days of that date as
25 expired and an applicant that seeks valid certification shall

.168237.1

1 apply with the board for new certification. The board shall by
2 rule require an applicant for renewal of the certification to
3 demonstrate a record free of convictions for drug- or alcohol-
4 related offenses for a minimum of one year prior to application
5 for renewal with the board.

6 F. A certified auricular detoxification specialist
7 shall practice under the supervision of a licensed doctor of
8 oriental medicine registered with the board as an auricular
9 detoxification specialist supervisor. A supervising doctor of
10 oriental medicine shall be accessible for consultation directly
11 or by telephone to a practicing auricular detoxification
12 specialist. The supervising doctor of oriental medicine shall
13 not supervise more specialists than permitted by board rule.
14 Supervision requirements shall be provided by rule of the
15 board.

16 G. A doctor of oriental medicine who supervises a
17 certified auricular detoxification specialist shall apply for
18 registration with the board. The board shall issue an
19 auricular detoxification specialist supervisor registration to
20 a doctor of oriental medicine who fulfills board requirements.
21 The board shall by rule require an applicant for registration
22 to list the certified auricular detoxification specialists that
23 will be supervised, pay an application fee for registration and
24 demonstrate clinical experience in treating or counseling
25 people suffering from alcoholism, substance abuse or chemical

.168237.1

1 dependency. ~~[The registration shall be valid until July 31~~
2 ~~following the initial registration.~~

3 H. ~~A doctor of oriental medicine who is registered~~
4 ~~to supervise certified auricular detoxification specialists~~
5 ~~shall apply to renew the registration annually with the board.~~
6 ~~The board shall renew the registration of an applicant who~~
7 ~~fulfills board requirements. The board shall by rule require~~
8 ~~an applicant to list the certified auricular detoxification~~
9 ~~specialists that the applicant is supervising and pay a fee for~~
10 ~~registration renewal. The renewed registration shall be valid~~
11 ~~for one year. An applicant who does not apply for renewal~~
12 ~~before the last date that the certification is valid may be~~
13 ~~required to pay a late fee pursuant to a rule of the board.~~
14 ~~The board shall deem a registration for which a renewal has not~~
15 ~~been applied within sixty days of that date as expired and an~~
16 ~~applicant that seeks valid registration shall apply with the~~
17 ~~board for new registration.~~

18 ~~F.]~~ H. A training program that educates auricular
19 detoxification specialists for certification shall apply for
20 approval by the board. The board shall approve a training
21 program that fulfills the board requirements established by
22 rule and that pays an application fee. The approval shall be
23 valid until July 31 following the initial approval.

24 ~~[J.]~~ I. A training program that is approved by the
25 board to provide training for certification of auricular

.168237.1

1 detoxification specialists shall apply to renew the approval
2 with the board. The board shall renew the approval of a
3 program that fulfills board requirements established by rule,
4 and the renewal shall be valid for one year. An applicant who
5 does not renew before the last date that the renewed approval
6 is valid shall pay a late fee. The board shall deem a program
7 approval that is not renewed within sixty days of that date as
8 expired and a program that seeks board approval shall apply
9 with the board for new approval.

10 ~~[K.]~~ J. The board shall impose the following fees:

11 (1) an application fee not to exceed one
12 hundred fifty dollars (\$150) for auricular detoxification
13 specialist certification;

14 (2) a fee not to exceed seventy-five dollars
15 (\$75.00) for renewal of an auricular detoxification specialist
16 certification;

17 (3) an application fee not to exceed two
18 hundred dollars (\$200) for registration of a certified
19 auricular detoxification specialist supervisor;

20 ~~[(4) a fee not to exceed seventy-five dollars~~
21 ~~(\$75.00) for the renewal of the registration of a certified~~
22 ~~auricular detoxification specialist supervisor;~~

23 ~~(5)]~~ (4) an application fee not to exceed two
24 hundred dollars (\$200) for the approval of an auricular
25 detoxification specialist training program;

.168237.1

1 ~~[(6)]~~ (5) a fee not to exceed one hundred
 2 fifty dollars (\$150) for the renewal of the approval of an
 3 auricular detoxification training specialist training program;
 4 and

5 ~~[(7)]~~ (6) a late fee not to exceed fifty
 6 dollars (\$50.00) for applications for renewal filed after the
 7 last valid date of a registration, certification, approval or
 8 renewal issued pursuant to this section.

9 ~~[E.]~~ K. In accordance with the procedures set forth
 10 in the Uniform Licensing Act, the board may deny, revoke or
 11 suspend any certification, registration, approval or renewal
 12 that a person holds or applies for pursuant to this section
 13 upon findings by the board that the person violated any rule
 14 established by the board."

15 Section 3. Section 61-14A-8.1 NMSA 1978 (being Laws 2000,
 16 Chapter 53, Section 12) is amended to read:

17 "61-14A-8.1. ~~[EXTENDED OR]~~ EXPANDED PRACTICE AND
 18 PRESCRIPTIVE AUTHORITY--~~[CERTIFICATION]~~ CERTIFICATIONS.--

19 ~~[A. The board may issue certification for extended~~
 20 ~~prescriptive authority as defined by the board to a doctor of~~
 21 ~~oriental medicine who has submitted completed forms provided by~~
 22 ~~the board, paid the application fee for certification and~~
 23 ~~submitted proof of successful completion of additional training~~
 24 ~~required by rule of the board.--~~

25 ~~B. The board may issue certification for expanded~~

.168237.1

1 ~~prescriptive authority only for the substances listed in this~~
2 ~~section to a doctor of oriental medicine who has submitted~~
3 ~~completed forms provided by the board, paid the application fee~~
4 ~~for certification and submitted proof of successful completion~~
5 ~~of additional training required by rule of the board.]~~

6 A. The board shall issue certifications, as
7 determined by rule of the board, for expanded practice and
8 prescriptive authority only for the substances enumerated in
9 Paragraphs (1) and (2) of Subsection C of this section to a
10 doctor of oriental medicine who has submitted completed forms
11 provided by the board, paid the application fee for
12 certification and submitted proof of successful completion of
13 additional training required by rule of the board. The board
14 shall adopt the rules determined by the board of pharmacy for
15 additional training required for the [prescription or
16 administration] prescribing, administering, compounding or
17 dispensing of caffeine, procaine, oxygen, epinephrine and
18 bioidentical hormones. The board and the board of pharmacy
19 shall consult as appropriate.

20 B. The board shall issue certifications in the four
21 expanded practices of basic injection therapy, injection
22 therapy, intravenous therapy and bioidentical hormone therapy.

23 C. The expanded practice and prescriptive authority
24 shall include:

25 (1) the prescribing, administering,

1 compounding and dispensing of herbal medicines, homeopathic
2 medicines, vitamins, minerals, amino acids, proteins, enzymes,
3 carbohydrates, lipids, glandular products, natural substances,
4 natural medicines, protomorphogens, live cell products,
5 gerovital, dietary and nutritional supplements, cosmetics as
6 they are defined in the New Mexico Drug, Device and Cosmetic
7 Act and nonprescription drugs as they are defined in the
8 Pharmacy Act; and

9 (2) the prescribing, administering,
10 compounding and dispensing of the following dangerous drugs or
11 controlled substances as they are defined in the New Mexico
12 Drug, Device and Cosmetic Act, the Controlled Substances Act or
13 the Pharmacy Act, if the prescribing doctor of oriental
14 medicine has fulfilled the requirements for expanded practice
15 and prescriptive authority in accordance with the rules
16 promulgated by the board for the substances enumerated in this
17 paragraph:

18 (a) sterile water;

19 (b) sterile saline;

20 (c) sarapin or its generic;

21 (d) caffeine;

22 (e) procaine;

23 (f) oxygen;

24 (g) epinephrine;

25 (h) vapocoolants;

.168237.1

- 1 (i) bioidentical hormones;
- 2 (j) biological products, including
- 3 therapeutic serum; and
- 4 (k) any of the drugs or substances
- 5 enumerated in Paragraph (1) of this subsection if at any time
- 6 those drugs or substances are classified as dangerous drugs or
- 7 controlled substances.

8 D. When compounding drugs for their patients,

9 doctors of oriental medicine certified for expanded practice

10 and prescriptive authority shall comply with the compounding

11 requirements for licensed health care professionals in the

12 United States pharmacopeia and national formulary."

underscored material = new
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